

Appln. No.: 09/661,171
Filed: September 13, 2000

Attorney Docket No. 66688

Claims 19-30 are rejected under 35 U.S.C. §112, 2nd paragraph. The term "high speed" has been cancelled and the claim now refers to a method of forming and filling in an automated filling operation Accordingly, the rejection under 35 U.S.C. §112, 2nd paragraph, is believed to have been fully overcome.

Claims 19-22 are rejected under 35 U.S.C. §103(a) over a combination of eight (8) patents. At the outset, it is noted that claim 19 has been amended to better define applicants' claimed invention. Claim 19, in part, calls for providing a plurality of wrapped food products each having an elongated tray with both a notch and a curved recess formed in the upper edges of the tray sidewalls. The notch extends throughout only a portion of the height of each sidewall and a line of weakness extends from the notch to the bottom wall. The notch and curved recesses are spaced apart from one another.

Applicants' claimed method calls for inserting the plurality of wrapped food products simultaneously with a mandrel which acts directly on each of the end walls of the trays. These features are not shown or suggested in any of the eight (8) patents cited in the rejection taken either alone or in combination. Only applicants' claimed invention teaches the location of multiple *potentially* weakening features, i.e., notch and recess, formed in the upper edges of tray sidewalls. These *potentially* weakening features are, according to applicants' claimed invention, spaced apart from one another and are located at the upper edge of the tray sidewall. This claimed arrangement prevents cooperation of the notch and recesses from aligning with one another in such a way as to cause migration of a failure path throughout the tray sidewalls. Each *potentially* weakening feature is only of partial height, preserving compression strength of the tray when pushed on-end for loading into the container. Only applicants' claimed invention teaches the use of multiple *potentially* weakening features to obtain packaging advantages while preventing the features from actually weakening the package. It is noted, for example, that '649 - Frost teaches the handling of but a single product unit. No pluralities of product units are involved, let alone pluralities of product units which are simultaneously filled using a mandrel. Further, no notch or recess is shown or suggested in '649 - Frost. None of the other patents cited in the rejection, taken either

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alone or in combination, teach or suggest applicants claimed features, as described above.

Accordingly, in light of the above Amendment and Remarks, the rejection of claims 19-22 under 35 U.S.C. §103(a) in view of eight (8) patents is believed to have been fully overcome.

Claim 23 is rejected under 35 U.S.C. §103(a) as unpatentable over a combination of eight (8) patents as applied above with reference to claims 19-22 and in addition to a ninth patent, '933 - Sellman. Claim 23 depends from claim 19 and is believed patentable for the reasons set forth above with respect to claim 19. The '933 - Sellman patent does not overcome the deficiencies of the eight (8) patents combined for the rejection of claims 19-22. Accordingly, the rejection of claim 23 is believed to have been fully overcome.

Claim 24 is rejected under 35 U.S.C. §103(a) over the combination of nine (9) patents as combined to support the rejection of claim 23, discussed above and in addition a tenth patent, the '877 - Pierce, Jr. patent. Pierce, Jr. does nothing to overcome the deficiencies of the nine (9) patents, as discussed above. The rejection of claim 24 is believed to have been fully overcome with the Amendment and Remarks set forth above with respect to claim 19 from which claim 24 depends.

Claims 25 and 26 are rejected under 35 U.S.C. §103(a) and further in view of an eleventh patent, '622 - Kingham et al. The '622 - Kingham et al. patent does nothing to overcome the deficiencies of the ten (10) previously cited patents that support rejection of the claims. Claims 25 and 26 are believed to be patentable for the reasons set forth above with respect to claim 19 from which these patents depend. Accordingly, the rejection of claims 25 and 26 under 35 U.S.C. §103(a) is believed to have been fully overcome.

Claims 27-30 are rejected under 35 U.S.C. §103(a) in light of the eleven (11) patents set forth above with respect to claims 25 and 26 and further in view of a twelfth patent, '359 - Phillips, Jr. The '359 - Phillips, Jr. patent does nothing to overcome the deficiencies of the eleven (11) patents, as set forth above. Claims 27-30 which depend from claim 19 are believed to be allowable for reasons set forth above

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with respect to claim 19 from which these claims depend. Accordingly, the rejection of claims 27-30 under 35 U.S.C. §103(a) is believed to have been fully overcome.

This Amendment was not presented earlier since it responds to issues first raised in the last Office Action. The amendment to claim 19 is believed proper and should be entered since it places the application in a better condition for allowance or appeal.

With entry of the above Amendment, claims 19-30 remain in the application.

Claims 19-30 are rejected under 35 U.S.C. §112, 2nd paragraph. The term "high speed" has been cancelled and the claim now refers to a method of forming and filling in an automated filling operation Accordingly, the rejection under 35 U.S.C. §112, 2nd paragraph, is believed to have been fully overcome.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current Amendment. The page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

There are seven (7) total pages in this Amendment.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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"VERSION WITH MARKINGS TO SHOW CHANGES MADE"

IN THE CLAIMS:

Claim 19 is amended as follows:

19. (Twice Amended) A method of forming and filling in an automated [a high speed commercial] filling operation a container suitable for shipping, display and consumer use having a body and a cover from an open-ended, partially pre-glued, partially assembled container comprising top, top front, top side, bottom front, bottom back, and bottom side flaps, comprising:

(a) folding the top side flaps inward;

(b) thereafter folding the top and top front so that the top front overlaps in part the front of the container, and attaching the top front to the front of the package to provide a closed top and an open bottom for the container;

(c) providing a plurality of wrapped food products, having opposed ends, each wrapped food product comprising an elongated food product, an elongated food delivery tray system, and an elongated wrap having end seals at opposite ends thereof, each elongated food delivery system comprising an elongated tray that has sufficient strength and stiffness to withstand compression loads experienced during packaging, including a bottom wall, a pair of side walls joined to the bottom wall, and a pair of end walls adjacent the wrapped food product ends and joined to the bottom wall, each of said side walls having at least one notch extending from an upper edge of the side wall, along a portion of the height of each side wall and a line of weakness extending from the bottom of each notch to the bottom wall, and one or more curved recesses in the upper edges of the side walls and spaced from the at least one notch to facilitate handling;

(d) inserting said plurality of wrapped food products simultaneously through the open bottom by applying force to the end walls of all of said wrapped food products simultaneously with a mandrel, thereby urging said wrapped food products longitudinally into the container, with said wrapped food products being arranged so that said mandrel acts directly on each of the end walls of the delivery systems and each of said wrapped food products will have an end seal readily accessible without restriction from the top of the container when the container is opened;

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- (e) folding the bottom side flaps inward;
- (f) folding either the bottom front or the bottom back flap inward,
- (g) folding the remaining bottom flap inward, and
- (h) fastening the flap folded in step (g) to the flap folded in step (f).